No. _____

In the Supreme Court of the United States

JOSE DURAN, ON HIS BEHALF AND AS REPRESENTATIVE OF A CLASS OF JUDGMENT CREDITORS OF THE ESTATE OF FERDINAND E. MARCOS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This proceeding was brought by the United States on behalf of the Republic of the Philippines, seeking recognition and enforcement of a Philippine forfeiture judgment. The funds at issue have been at Merrill Lynch in New York since 1972. The funds were deposited in the name of a Panamanian corporation, Arelma, Inc., which was an *alter ego* of Ferdinand E. Marcos, a former President of the Republic. In an interpleader filed by Merrill Lynch in 2000, a federal court awarded the funds to a Class of 9,539 Filipino human rights victims in partial satisfaction of the Class's judgment against Marcos. In 2008, this Court reversed that judgment, holding the Republic, which exercised its sovereign immunity, was a required party that could not be joined under Fed. R. Civ. P. 19. *Philippines* v. *Pimentel*, 553 U.S. 851 (2008). In 2009, a Philippine court entered a judgment forfeitting the funds to the Republic. Despite the funds being in *custodia legis* of a United States federal court, the Philippine court held that it possessed *in rem* jurisdiction over the funds. The district court held that Philippine law applied, and it was bound by the Philippine court's conclusion of law as to *in rem* jurisdiction. The court of appeals affirmed. This proceeding presents the following questions:

1. Whether recognition of a foreign judgment based on a fictitious assertion of in rem jurisdiction is barred as contrary to fundamental principles of due process?

2. Whether recognition of the foreign judgment is barred by the Republic's failure to give notice to the

Class members, the adjudicated owners of the funds, at the outset of the Philippine forfeiture case, contrary to the explicit text of 28 U.S.C. §2467?

3. Whether recognition of the Philippine forfeiture judgment is barred by 28 U.S.C. §2462 since the Republic's cause of action accrued 30 years earlier, well beyond the five (5) years permitted?

PARTIES TO THE PROCEEDING

Petitioner and appellant is Jose Duran, a representative of the Class of Filipino Human Rights Victims, also an appellant below.

Respondent, and appellee below is the United States of America.

Other appellants below are Jeana Roxas, as personal representative of the Estate of Roger Roxas, and Golden Budha Corporation. These appellants filed a separate certiorari petition at No. 25-548.

RELATED PROCEEDINGS

United States District Court (D.D.C.):

> *In Re: Enforcement of Philippine Forfeiture Judgment Against All Assets of Arelma, S.A.,* [etc.] No. 16-1339-RJL (July 15, 2019) (granting intervention to the Class and transferring venue to S.D.N.Y.)

United States District Court (S.D.N.Y.):

> *In Re: Enforcement of Philippine Forfeiture Judgment Against All Assets of Arelma, S.A.,* [etc.] No. 19-412-LAK-GWG (Feb. 27, 2020) (denying summary judgment on the statute of limitations defense)

In Re: Enforcement of Philippine Forfeiture Judgment Against All Assets of Arelma, S.A., [etc.] No. 19-412-LAK-GWG (Oct. 3, 2023) (report and recommendation on cross motions for summary judgment)

In Re: Enforcement of Philippine Forfeiture Judgment Against All Assets of Arelma, S.A., [etc.] No. 19-412-LAK-GWG (Jan. 11, 2024) (adopting report and recommendation granting summary judgment to United States and denying summary judgment to the Class)

United States Court of Appeals (CA2):

In Re: Enforcement of Philippine Forfeiture Judgment Against All Assets Of Arelma, S.A., [etc.], Nos. 24-185(L), 24-186 (Con) (Aug. 18, 2025) (opinion)

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The Second Circuit's opinion is reported at 153 F.4th 142, and is reproduced in the Appendix at App.1-56. The Southern District of New York's opinion granting summary judgment to the United States as to the statute of limitations is reported at 442 F.Supp.3d 756, and is reproduced in the Appendix at App.59-84 The district court opinion granting summary judgment to the United States on all other issues are reproduced in the Appendix at App.85-89 and App.90-154, respectively. This Court's opinion in *Republic of the Philippines* v. *Pimentel* is reported at 553 U.S. 851 (2008).

JURISDICTION

The Second Circuit entered its judgment on August 18, 2025. Its order denying rehearing and rehearing *en banc* was entered on October 16, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant portions of 28 U.S.C. §2462 and 28 U.S.C. §2467 are reproduced in the Appendix at App.155-162.

STATEMENT OF THE CASE

This proceeding was brought by the United States on behalf of the Republic of the Philippines for recognition and enforcement of a Philippine forfeiture judgment. For more than 200 years, United States

courts refused to enforce foreign forfeiture judgments. See *The Antelope*, 10 Wheat. 66, 123 (1825). In the year 2000, Congress enacted the Enforcement of Foreign Judgment statute, 28 U.S.C. §2467, as a narrow exception to this longstanding policy. It was not a broad omnibus law enabling any foreign country to enforce any and all forfeiture judgments in United States courts. Rather, it created a narrow opportunity for certain state parties to a United Nations Convention to seek the discretionary assistance of the Attorney General of the United States to enforce forfeiture judgments on their behalf. Section 2467 has been used by the Attorney General almost exclusively to assist foreign nations in recovering assets located in the United States that are the product of drug trafficking or money laundering. This proceeding is the first time the Attorney General has used Section 2467 to prevent victims of *jus cogens* human rights abuses from collecting on a judgment against the perpetrator of the abuses, a former head-of-state, and returning the funds to the control of his son, the current head-of-state.

Ferdinand E. Marcos was elected President of the Philippines in 1965 and again in 1969. To maintain himself in office, he declared martial law in 1972. He imprisoned opposition leaders and dissidents using arrest orders he personally signed. The Philippine military, of which he was commander-in-chief, regularly tortured detainees using brutal methods to extract information. Many detainees were summarily executed. Of those executed, the military often covered up their torture and death by causing the bodies to disappear into unmarked graves.

Marcos remained President until a popular revolt forced his ouster in 1986, and Cory Aquino was installed as the new President. Marcos fled to the United States, where he remained until his death in 1989. Through executive orders, the new President sought to recover property that Marcos and his cronies allegedly stole from the Republic.

Based on documents found at the Presidential Palace in Manila, the Republic learned of two accounts which Marcos had in the name of Arelma, Inc. at Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS") and Merrill Lynch Asset Management, Inc. ("MLAM"). A crony of Marcos, Jose Campos, incorporated Arelma, Inc. in Panama for Marcos about the same time Marcos declared martial law. Campos then opened an account for Arelma at MLPFS in New York City. He deposited $2 million from a Swiss bank account he controlled into the MLPFS account. The origin of the funds has never been established. Eleven years later, Arelma opened a second account at MLAM which took control of the funds. It is uncontested that Arelma was a Marcos *alter ego*.

In 1986, the Republic initiated criminal proceedings in the Philippines and civil litigation in the United States and Switzerland against Marcos to recover Marcos property. The Republic filed lawsuits in New York, Texas and California broadly alleging that Marcos misappropriated more than $500 million of the Republic's money, investing the money in the United States using dummy corporations. The lawsuits sought an accounting of all Marcos wealth. The cases named Jose Campos as a Marcos co-conspirator, identified Arelma as one of the dummy corporations, and alleged the funds at Merrill Lynch

were stolen property. In 1987, a federal court in California entered an injunction freezing various properties nationwide, including Arelma's funds in the two Merrill Lynch accounts.

In May 1986, Jose Campos settled litigation against both him and Marcos brought by the Republic. Campos transferred cash and properties to the Republic valued at $115 million in return for a general release of himself and his family from all civil and criminal claims. At the time, Arelma's funds at Merrill Lynch totaled about $5.3 million.

The Republic voluntarily dismissed its New York, Texas, and California lawsuits against Marcos without the consent of Marcos or his attorneys.

In the Philippines, the Republic filed a forfeiture petition against Marcos before the Sandiganbayan court in 1991. The case alleged Marcos misappropriated hundreds of millions of dollars, which were held in several Swiss bank accounts. The petition alleged in passing that Marcos and Campos conspired to create Arelma and deposit money in an account at MLAM in New York. The petition's *ad damnum* clause only sought recovery of monies held by the Swiss banks. No relief was sought as to the Arelma funds at Merrill Lynch, presumably because the Campos settlement satisfied any claim thereto. In 2003, the Philippine Supreme Court entered summary judgment awarding the Republic the funds in the Swiss bank accounts, which had since been transferred by the Swiss Federation to the control of Philippine courts, thus giving the latter *in rem* jurisdiction. The Court declared the judgment "final and executory."

Petitioner Jose Duran is a member and Class representative of a Class of Filipino human rights victims certified by the federal court in Hawaii. He is a victim of torture perpetrated by the Philippine military under its commander-in-chief during martial law, Ferdinand E. Marcos. The other 9,538 members of the Class (or heirs) are Filipinos systematically tortured, summarily executed or disappeared between 1972 and 1986. The horrific tortures they suffered are described in *In re Estate of Ferdinand E. Marcos Human Rights Litigation*, 910 F.Supp. 1460 (D.HI 1995).

Following a trifurcated jury trial, the District of Hawaii entered a judgment of almost $2 billion against the Marcos Estate in 1995 together with a permanent injunction prohibiting the Marcoses from transferring or dissipating the Estate's assets. The Class obtained a second judgment for contempt against the Estate, Imelda Marcos and Ferdinand Marcos, Jr. in the amount of $353.6 million for violating the injunction and refusing to testify or produce documents. Philippine courts' refusal to recognize the Class's judgments has limited the Class to executing on Marcos assets located in the United States.

MLPFS, faced with claims by the Class and the Republic for the Arelma funds, filed a federal interpleader in 2000 naming the Class and the Republic as defendants and deposited the funds into the District of Hawaii. The Republic, lacking evidence the funds ever belonged to it, exercised its sovereign immunity and was dismissed. After discovery and a trial on the merits, the District of Hawaii awarded the funds to the Class in July 2004, finding that the funds in Arelma's account at MLPFS belonged to

Marcos. It directed the funds be held in *custodia legis* in the Class's settlement fund pending all appellate proceedings, and the Republic stipulated to this. The Republic appealed, arguing that it was a required party under Fed. R. Civ. P. 19(b) and the interpleader could not proceed in its absence. The Ninth Circuit disagreed, but in 2008, this Court reversed, directing the lower court to dismiss the interpleader. *Pimentel, supra*.

The funds were not fully returned to MLPFS until February 2010. The funds had been commingled with other monies the Class collected together with almost $5 million in interest earned while the funds were in *custodia legis* in the Class's settlement fund. Two accountings were conducted. The Class prevailed on its claim to the earnings, but this was appealed. In November 2009, the Ninth Circuit reversed on the merits, ruled the earnings should be returned to MLPFS, and ordered a third accounting.

Four (4) days after the Class's interpleader judgment was entered in July 2004 by the Hawaii federal court, the Republic filed a summary judgment motion seeking forfeiture of the Arelma funds in the concluded 1991 forfeiture case. App.100. Only members of the Marcos family were named defendants. No attempt was made to serve notice on the Class members who were then the adjudicated owners of the funds. After five (5) years of secretive litigation, the Sandiganbayan reopened the forfeiture case and forfeited the funds in the MLAM account in favor of the Republic. The April 2009 decretal judgment stated in pertinent part:

> … Partial Summary Judgment is hereby rendered declaring all the assets, investments, securities, properties, shares, interests, and funds of Arelma, Inc., **presently under management and/or in an account at the Meryll Lynch Asset Management, New York, U.S.A., in the estimated aggregate amount of US$3,369,975.00 as of 1983, plus all interests and all other income that accrued thereon**, …

(emphasis added) The *res* on which jurisdiction was predicated - the funds in the MLAM account - matched the *res* in the decretal judgment. The Sandiganbayan concluded it possessed *in rem* jurisdiction over the funds at MLAM even though "the Arelma funds are within US territory and jurisdiction." It was stipulated in the court below that "the Sandiganbayan never had actual or constructive control over the Arelma Assets which have been in the United States since 1972 and were in *custodia legis* of the Hawaii court between December 2000 and February 2010."

The Class transferred its two judgments to New York, levied on the funds at MLPFS and initiated a turnover proceeding in the Supreme Court of New York. The funds levied upon were *not* Arelma funds "under management and/or in an account at MLAM." MLPFS deposited the levied funds with the New York court which still maintains control over the funds in *custodia legis*. That court stayed the turnover pending the outcome of this proceeding.

Twice the Republic formally requested the U.S. Attorney General to file a proceeding to recognize and enforce its forfeiture judgment. The first request was submitted in January 2010. The Attorney General did not grant the request. The second request, submitted after the judgment was affirmed by the Philippine Supreme Court, was granted. On June 27, 2016, the Department of Justice filed its Application, pursuant to 28 U.S.C. §2467 (App.13), to recognize and enforce the 2009 Sandiganbayan decretal judgment. The Class was served with notice and intervened. The Class filed an answer and raised six affirmative defenses allowed by Section 2467. *Id*.

The Southern District of New York denied the Class's affirmative defense that the Application was barred by the five-year statute of limitations in 28 U.S.C. §2462. App.78–79. Following completion of discovery, the Department and the Class filed cross motions for summary judgment as to the Class's remaining affirmative defenses. The district court granted summary judgment to the Department and denied the Class's motion. App.87. On January 12, 2024, the district court entered judgment recognizing the Sandiganbayan's decretal judgment. App.85. The Class appealed. There was no cross appeal.

The Second Circuit affirmed the judgment. App.3. It rejected the Class's argument that American law, especially American standards of due process, governed. App.29–31. It ruled that Philippine law as to *in rem* jurisdiction applied, stating: "[b]ut if a foreign court cannot have jurisdiction to forfeit property located in the United States, then § 2467 could almost never be invoked." App.29. Ironically, the court then cited three Section 2467 cases where

foreign judgments were recognized based on the foreign courts' personal jurisdiction over the defendants. *Id*. The court cited no case in the history of American jurisprudence where an American court recognized the *in rem* jurisdiction of a foreign court over property located in the United States. Nor did it distinguish the cases in this Court and other circuit courts contrary to its conclusion.

The lower court further ruled that the Class failed to prove that the Sandiganbayan misapplied Philippine law on *in rem* jurisdiction. App.30–31. The court focused only on the viability of the foreign judgment under Philippine law versus its compliance with principles of American law. Therefore, it never considered this Court's standing mandate that a federal court evaluate whether the foreign court's asserted jurisdiction offended American "traditional notions of fair play and substantial justice implicit in due process." *Milliken* v. *Meyer*, 311 U.S. 457, 462–64 (1940).

In a ruling for which there is no precedent in American law, the lower court modified the decretal foreign judgment *sua sponte* to substitute a different *res* for the *res* set forth in the Sandiganbayan's decretal judgment. The court stated, with no factual basis, that reference to MLAM was a "clerical error" and should have been MLPFS. App.44. The lower court bootstrapped this ruling in its factual narrative by mentioning only one "Merrill Lynch" account held by Arelma when there were two Arelma accounts held by separate firms. App.9, App.41. The foreign forfeiture petition and judgment identified only the MLAM account, and the evidence presented (including the "pregnant admission" of Imelda

Marcos) was limited to that account. In April 2009, the operative date in the foreign decretal judgment, MLAM and MLPFS were independently owned by separate financial conglomerates unrelated to Merrill Lynch & Co. and the Arelma accounts at each were separate. By substituting the Arelma account at MLPFS in place of the MLAM account on which the foreign court's jurisdiction and evidence was based, the lower court was required to explain whether this voided the judgment's subject matter jurisdiction. It did not do so.

The lower court ruled that the Class members were not entitled to receive notice of the foreign forfeiture. App.35. Despite the Class being the adjudicated owner-in-possession of the funds when the Republic first sought to forfeit the funds in 2004, the Republic never gave notice of its motion to the Class members. App.18. The Second Circuit ignored explicit language in section 2467, which required the foreign nation to "take steps, in accordance with the principles of due process, to give notice of the proceedings to all persons with an interest in the property *in sufficient time to enable such persons to defend*." (emphasis added) App.34. Instead, it ruled that whether someone is an interested person is determined when the court enters final judgment–in this case, 2009–not when the proceeding was initiated in 2004. App.35. Even though the Class remained as owner-in-possession of $5 million of the funds until 2010 (based on a 2009 court ruling), the Second Circuit reasoned that this Court's 2008 decision in *Pimentel* retroactively stripped the Class members of their interest and right to receive notice in 2004. App.34

The Second Circuit acknowledged that section 2467 proceedings for recognition of foreign judgments are subject to the five-year statute of limitations in 28 U.S.C. §2467. App.19. The lower court further acknowledged that the alleged wrongdoing–the $2 million transfer of funds to Marcos's Arelma account –occurred in 1972 (App.20), and that in 1986 the Republic brought three lawsuits in the United States to recover monies which Marcos allegedly misappropriated, including Arelma funds. App.11. The court rejected the Class's contention that the Republic's claim to the Arelma funds accrued no later than 1986 when the Republic possessed a complete and present cause of action. It ruled that, for purposes of section 2462, the "claim" is not the claim adjudicated in the foreign forfeiture. Rather, section 2467 creates an independent "claim" in favor of the Attorney General, reasoning that the enforcement proceeding offered different remedies and implicated a different set of facts than the underlying foreign judgment. App.21. The court never addressed the Class's contention that Section 2467 does not create a "cause of action" which is the linchpin for accrual under *Gabelli* v. *SEC*, 568 U.S. 442, 448 (2013). Instead, the court ruled the Attorney General's "claim" "accrues" when he files his application to enforce the foreign judgment. App.24. The court acknowledged that under its ruling, the Attorney General has discretion to seek recognition of foreign causes of action many decades old, such as the instant one. *Id*.

The lower court denied the Class's Motion for Rehearing and Rehearing *En Banc* on October 16, 2025. App.58. This Court, per Justice Sotomayor, denied the Class's Application to Stay the Judgment

(No. 25A515) on November 14, 2025 based on "the Government's representation that it will not transfer the funds outside the United States before the disposition of any petition for a writ of certiorari."

REASONS FOR GRANTING THE PETITION

This Petition presents significant issues as to the legal standards to be applied to the recognition of foreign forfeiture judgments. The decision below accepted without question a foreign court's conclusion of law that it possessed *in rem* jurisdiction over property held in *custodia legis* of a United States federal court. The very essence of *in rem* jurisdiction is a court's actual or constructive control of the property specifically identified and at issue. Where, as here, it is stipulated the foreign court had no control over the property, the foreign judgment is void *ab initio* under American law. The decision compounds its error by forgiving the foreign sovereign for deliberately failing to give notice of the foreign forfeiture proceeding to the Class, which for more than five (5) years was the adjudicated owner of some or all the property. The decision eviscerates the section 2467 requirement that bars recognition of the foreign judgment unless the sovereign gave notice of the proceeding to "all persons with an interest in the property in sufficient time to enable such persons to defend." The decision reached the unprecedented and illogical conclusion that standing–and therefore the constitutional right to receive notice–is not determined until a court enters a final judgment. The decision's third erroneous conclusion is that Section 2467 creates a "claim" in favor of the Attorney General which does not acc-

rue until the Attorney General–standing in the shoes of the foreign sovereign–files his application for recognition of the foreign judgment. This construction vitiates the five-year statute of limitation in section 2462, which would otherwise bar recognition of the Republic's 30-year-old cause of action.

I. The Decision Below Recognizing a Foreign Court's Fictitious Assertion of *In Rem* Jurisdiction Violates Due Process, Contravenes Decisions of this Court and Conflicts with Decisions of Other Circuit Courts

The *sine qua non* of *in rem* jurisdiction is a court's actual or constructive control over the *res*. "[T]he court must have actual or constructive control of the res when an *in rem* forfeiture suit is initiated." *Republic Nat'l Bank* v. *United States*, 506 U.S. 80, 87 (1992). In *Hanson* v. *Denckla*, this Court held that *in rem* jurisdiction requires that a court have control of the *res* within its territory, otherwise its judgment is void. 357 U.S. 235, 248–250 (1958) "[I]n an *in rem* forfeiture proceeding, 'it is the property which is proceeded against'" and "'jurisdiction [is] dependent upon seizure of a physical object.'" *United States v. Ursery*, 518 U.S. 267, 277, 283 (1996) (citations omitted). section 2467 bars recognition of a foreign forfeiture judgment where the foreign court lacked subject matter jurisdiction. See 28 U.S.C. §2467(d)(1)(C); App.28.

The factual basis for Sandiganbayan's lack of control over the Arelma funds is undisputed. In 2004,

the Republic entered into a court approved stipulation stating:

> The interpleader funds may be transferred to and shall be kept by the Clerk of the District of Hawaii in the fund in the Clerk's Office for *In re Estate of Ferdinand E. Marcos Human Rights Litigation*, MDL No. 840 for the duration of the instant appeal where the funds shall be in *custodia legis*.

In the lower court, the United States stipulated:

> The Sandiganbayan never had actual or constructive control over the Arelma Assets which have been in the United States since 1972 and were in *custodia legis* of the Hawaii court between December 2000 and February 2010.

The lower court erred in blindly accepting the Philippine court's legal conclusion that it possessed *in rem* jurisdiction over the Arelma funds contrary to this Court's precedents. In effect, the Philippine court was asserting universal jurisdiction over property in the United States. As early as 1808, this Court held it would not recognize a foreign court's invocation of *in rem* jurisdiction absent proof the foreign court controlled the asset. *Rose* v. *Himely*, 8 U.S. 241 (1808). Chief Justice Marshall stated therein:

> "It is repugnant to every idea of a proceeding in rem to act against a thing which is not in the power of the sovereign under whose authority the court proceeds; and no nation will admit that its property should be absolutely changed, while remaining in its own possession, by a sentence which is entirely ex parte."

Citing *Rose*, this Court stated in *Overby* v. *Gordon*, 177 U.S. 214, 221–23 (1900):

> In cases purely in rem, as in admiralty and revenue cases for the condemnation or **forfeiture of specific property, a preliminary seizure of the property is necessary** to the power of the court to adjudicate at all.
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> And so it is laid down by jurists, as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decisions. 'Any exertion of authority of this sort beyond this limit,' says Story, 'is a mere nullity, and incapable of binding such persons or property in any

> other tribunals.' Story, Confl. Laws, sect. 539."

(emphasis added) The Court reiterated this principle in its seminal ruling in *Hilton* v. *Guyot*, 159 U.S. 113, 166–67 (1895), where it held that before a court may recognize a foreign judgment based on *in rem* jurisdiction, the property must be in the custody of the foreign court. Moreover, when property is in the custody of a federal court–as the Arelma funds were–this Court has long held that no other court may assert a legal right over the property. *The Lottawanna*, 87 U.S. 201, 225 (1873).

In this section 2467 proceeding, a federal court must apply federal law to satisfy itself that the foreign court's assertion of *in rem* jurisdiction does not offend traditional notions of fair play and substantial justice. The decision's failure to do so violates *Milliken*, which mandates a federal court to review the factual basis for the assertion of jurisdiction by a foreign court to determine whether the exercise of jurisdiction offends American "traditional notions of fair play and substantial justice implicit in due process." 311 U.S. at 462–64. The assertion of *in rem* jurisdiction must comport with due process. *Shaffer* v. *Heitner*, 433 U.S. 186, 206-211 (1977). The court below did not find–nor could it find–that the Sandiganbayan's assertion of *in rem* jurisdiction satisfied federal due process. The decision is contrary to numerous opinions applying American law and *Milliken's* standard of review to evaluate whether the foreign court possessed jurisdiction, including ones from the Second Circuit. See e.g., *Ackerman* v. *Levine*, 788 F.2d 830, 838 (CA2 1986); *In re One Prinz Yacht*

Named Eclipse, 2022 U.S.Dist. LEXIS 163521 at *14-15 (D.D.C. Sept. 9, 2022) (a section 2467 case).

The decision below is in direct conflict with a decision of the Ninth Circuit. In 2006, the Ninth Circuit specifically addressed whether a United States court could recognize the *in rem* jurisdiction of a Philippine court over the Arelma funds. It stated:

> The Republic has no jurisdiction over the *rem,* which is in the United States, and any judgment made without proper jurisdiction is unenforceable in the United States. Restatement (Third) of the Foreign Relations Law of the United States, § 482(2)(a) (1987).

Merrill Lynch v. *ENC Corp*., 467 F.3d 1205, 1207 (CA9 2006)

The decision below undermined its own conclusion of *in rem* jurisdiction by substituting the MLPFS account the Class had levied upon in place of the MLAM account set forth in both the decretal foreign judgment and the decretal judgment of the district court. App.44. There was no cross appeal or request to substitute one account for the other, nor could there be. The *sua sponte* substitution violated this Court's rulings in *Helvering* v. *Pfeiffer*, 302 U.S. 247, 250–51 (1937) (absent a cross appeal, the court cannot grant relief to an appellee) and *Hilton*, *supra.* (a U.S. court cannot relitigate a foreign judgment). By misrepresenting that Arelma had just one account (App.9; App.41), the decision justified the substitution as a "clerical error" even though clerical errors are limited to mathematical computations and

typographical errors. The lower court attempted to justify its ruling by contending the Philippine Supreme Court extended the foreign judgment to include all Arelma property. App.44. However, the only *res* supporting that Court's *in rem* jurisdiction– and the only *res* mentioned in its ruling – was the MLAM account. The Philippine Supreme Court never referred to any other Arelma account, and never changed the decretal judgment which is limited to the MLAM account.

In an *in rem* action, the *res* is the defendant. "The effect of a judgment in such a case is limited to the property that supports jurisdiction." *Shaffer*, 433 U.S. at 199. The account at MLAM has been the sole basis for *in rem* jurisdiction since the forfeiture petition was filed in 1991, and is specified therein. The Sandiganbayan never asserted *in rem* jurisdiction over the account at MLPFS. The only "pregnant admission," on which the Sandiganbayan's grant of summary judgment was predicated, was limited to the MLAM account. The Sandiganbayan's 2009 decretal judgment is limited to the MLAM account. App.41. The judgment transmitted to the US Attorney General is limited to the MLAM account. The judgment entered by the lower court is limited to the MLAM account. Because the MLPFS account never supported *in rem* jurisdiction in the forfeiture case, any judgment based on the MLPFS account is a nullity. *Overby*, 177 U.S. at 223.

II. The Panel's Ruling that the Class Was Not Entitled to Notice of the Foreign Forfeiture Proceeding Is Contrary to the Explicit Language of Section 2467, and Conflicts with Decisions of this Court and Other Circuit Courts

The lower court's ruling–in effect, that standing and the right to receive notice is determined retroactively when a final judgment is issued–is unprecedented in American law and abhorrent to the principle of due process. App.35. This holding stands centuries of jurisprudence on its head. Just as a court's jurisdiction is determined at the time an action is filed, *Friends of the Earth, Inc.* v. *Laidlaw Envtl Services (TOC), Inc.,* 528 U.S. 167, 175 (2000); *Cortlandt St. Recovery Corp.* v. *Hellas Telecomms,* 790 F.3d 411, 426 (CA2 2015), so too are the identities of interested parties in order that notice can be timely given. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Jones* v. *Flowers*, 547 U.S. 220, 226 (2006). The notice provided "must afford a reasonable time for those interested to make their appearance." *Mullane* at 314.

Persons entitled to notice are determined when the filing is made, not when a decision on the merits is rendered. Waiting to identify interested parties

until a court renders its decision five years later would defeat the whole purpose of an adversarial proceeding as well as the explicit language of section 2467 which states that notice must be given "in sufficient time to enable him or her to defend." This is also true under Philippine law as admitted by the United States's expert witness. S.D.N.Y. ECF No. 234, Ex. 41 at 46. Notice to the Class members, the adjudicated owners of the Arelma funds, was required in July 2004 when the Republic filed its motion for summary judgment. As this Court stated in *Fuentes* v. *Shevin*, 407 U.S. 67, 81 (1972), "[i]f the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented."

The Second Circuit's ruling is directly contrary to decisions of this Court (e.g. *Davis* v. *FEC*, 554 U.S. 724, 734 (2008)), other circuit courts (e.g. *Rio Grande Found.* v. *Oliver,* 57 F.4th 1147, 1162 (CA10 2023)) and even the lower court (*e.g. Torres* v. *$36,256.80 US Currency*, 25 F.3d 1154, 1158 (CA2 1994)), which hold that standing–and therefore the right to receive notice – is exclusively a threshold issue. Had Class members received timely notice, they could have asserted several defenses which should have led to dismissal of the forfeiture action.

The decision's conclusion that the Class ceased to be an interested party in April 2009 is contrary to the facts and law. App.35. The Class was the adjudicated owner and possessor of $5 million in earnings from the Arelma funds as of that date which was in the Class's settlement fund in *custodia legis* with the federal court. The Ninth Circuit later ruled the earnings should be returned to MLPFS, but that did

not alter the standing of the Class as an interested party as of April 2009. The decision below tried to undermine the Class's standing by collaterally attacking the District of Hawaii's decision as void *ab initio*. App.36. But a ruling on the merits by a court with jurisdiction, even if erroneous, is never void *ab initio*. *United Student Aid Funds, Inc.* v. *Espinosa*, 559 U.S. 260, 270-72 (2010). Furthermore, "[t]he power of the court over moneys belonging to its registry continues until they are distributed pursuant to final decrees in the cases in which the moneys are paid." *Osborn* v. *United States*, 91 U.S. 474, 479 (1875). As the United States stipulated, this did not occur until February 2010.

III. The Decision Abrogated the Applicable Statute of Limitations in Contravention of this Court's Decisions

The decision below correctly recognized that section 2462's five-year statute of limitations applies to section 2467 proceedings to enforce foreign forfeiture judgments. App.19 But it fundamentally erred by ruling that the Attorney General's application to enforce a foreign nation's judgment is itself a new claim that does not accrue until he files his application. App.21

The decision below is unprecedented. It is the first to hold that an enforcement mechanism constitutes an independent claim in favor of the United States. The text of section 2467 belies any basis for that contention. The statute simply authorizes the Attorney General to bring an "application" (not a complaint) "on behalf of the foreign nation,"

and any judgment entered is "on behalf of the foreign nation." The statute's text is bereft of the word "claim." As a surrogate for the foreign nation, the Attorney General is not enforcing any wrongdoing against the United States. Nor is the United States the beneficiary of a judgment. Section 2467 is similar to Fed. R. Civ. P. 69(a) and 28 U.S.C. §1963 which give a procedural right but not a "claim." The "claim" enforced under section 2467 is the same claim adjudicated in the foreign nation's court. The enumerated defenses in section 2467(d)(1), such as fraud in obtaining the judgment, relate only to the foreign nation's claims, not the Attorney General's application. Under the decision's rationale, the statute's defenses are superfluous since they can never apply to the Attorney General's hypothecated "claim."

This Court unanimously held in *Gabelli*, that a claim does not "accrue" for purposes of section 2462 until the plaintiff "has a complete and present cause of action." 568 U.S. at 448. The decision below did not–and could not–attribute to the Attorney General any cause of action since there was no wrongdoing against the United States. See *Am. Fire & Casualty. Co.* v. *Finn*, 341 U.S. 6, 12–13 (1951) ("A cause of action does not consist of facts, but the unlawful violation of a right which the facts show.") It is only the Republic's cause of action which "accrued," and that occurred in 1986, 30 years ago.

The decision erroneously distinguished *Gabelli* on the ground that it is limited to federal agency cases where an agency penalty assessment precedes a federal enforcement action. App.24-25. Neither the Republic's three cases in the U.S. nor its forfeiture in the Philippines required two steps. There was no

agency procedure. This Court has twice reaffirmed *Gabelli* and ruled it applies to all federal statutes of limitation, not just to section 2462 and federal agencies. This Court reiterated this in *Corner Post, Inc.* v. *Bd. of Governors of the Fed. Rsrv. Sys.*, wherein it stated:

> "Accrue" had a well-settled meaning in 1948, as it does now: A "right accrues when it comes into existence," *United States* v. *Lindsay*, 346 U. S. 568, 569, 74—*i.e.*, "when the plaintiff has a complete and present cause of action," *Gabelli* v. *SEC*, 568 U. S. 442, 448.... The Court's precedent treats this definition of accrual as the "standard rule for limitations periods." (citations omitted).

603 U.S. 799, 800 (2024).

SUMMARY DISPOSITION

Pursuant to Supreme Court Rule 16, Petitioner urges the Court to summarily reverse and remand this case to the lower court with instructions to dismiss the United States' Application for Recognition and Enforcement. "[I]n an *in rem* forfeiture proceeding, 'it is the property which is proceeded against'" and "'jurisdiction [is] dependent upon seizure of a physical object.'" *United States* v. *Ursery*, *supra.*, at 277, 283. It is undisputed that the foreign court lacked actual or constructive control over the Arelma funds which were in *custodio legis* of

a U.S. federal court. An unbroken line of decisions in this Court beginning in 1808 deny recognition to *in rem* judgments of courts which lacked control of the *res* and deem such judgments void *ab initio* under principles of U.S. law. Section 2467 itself bars recognition of a foreign forfeiture judgment which lacks subject matter jurisdiction.

The lower court's substitution of the *res* in the foreign judgment (under the guise of a clerical error) is an additional reason to summarily reverse the decision below. The foreign court's asserted jurisdiction, evidence and decretal judgment was limited to the account at MLAM. Arelma's separate account at MLPFS was never the subject of the foreign court's asserted jurisdiction, evidence or judgment. The lower court's modified judgment, therefore, is itself void for lack of *in rem* jurisdiction.

CONCLUSION

Wherefore, Petitioner respectfully requests that his Petition for Writ of Certiorari be granted and this Court summarily reverse and remand this case to the court below with instructions to dismiss the United States' Application for Recognition and Enforcement.

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